Office-Supreme Court, U.S.
FILED
FEB 4 1985
ALEXANDER L. STEVAS, CLERK

(6)

No. 84-1010

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

LYDIA B. CHAMPION, et al.,

Petitioners,

v.

GEORGE DEUKMEJIAN, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHRISTINE A. BOLOGNA
Acting Chief Counsel
Department of Personnel
Administration
1115 11th Street
Sacramento, CA 95814
(916) 324-0512

Counsel for Respondents
George Deukmejian and
Michael Frost
(James Mosman)

QUESTION PRESENTED

Whether the district court committed abuse of discretion or clear error in applying existing law and denying the preliminary injunction?

LIST OF PARTIES TO THE PROCEEDING

(SUP.CT. R. 34.2)

The list of petitioners set forth in the Petition for Writ of Certiorari is correct. The list of respondents is incorrect, in that Michael Frost, in his capacity as then-Director of the Department of Personnel Administration, was substituted as a party in place of original defendant and named respondent Dennis Batchelder. (Petn. for Writ of Cert., App. A-1, p. 3a.)

Michael Frost is no longer the Director of the Department of Personnel Administration. Effective December 17, 1984, the Department of Personnel Administration Interim Director is James Mosman.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES TO THE PROCEEDING . . ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION

1. There Are No Special and Important Reasons Therefor. . . 5

2. The Petition Does Not Warrant The Exercise of This Court's Extraordinary and Discretionary Jurisdiction. 7

   A. There is no conflict in decisional law. 7

   B. There is no overriding national issue. 9

CONCLUSION 11

TABLE OF AUTHORITIES

Page

Cases

Abood v. Detroit Board of Education (1977) 431 U.S. 209 . . . 6,9

Ellis v. Brotherhood of Railway Clerks (1984) 104 S.Ct. 1883 . . 5,6,9

Hudson v. Chicago Teachers Union (7th Cir. 1984) 743 F.2d 1187 . . 7,8,9

NLRB v. Pittsburgh S.S. Co. (1951) 340 U.S. 498 6

Robinson v. State of New Jersey (3rd Cir. 1984) 741 F.2d 598 . . 7,8,9

Codes

Cal. Government Code § 3513(j) 2
§ 3515 2
§ 3515.7 2
§ 3515.8 2

Rules of Court

Supreme Court rule 17 5
17.1 5

No. 84-1010

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

LYDIA B. CHAMPION, et al.,

Petitioners,

v.

GEORGE DEUKMEJIAN, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATEMENT OF THE CASE

The facts and procedural history of this case are set forth in the opinion of the courts below. (Petn. for Writ of Cert., App. A-1, pp. 2a-5a, 25a; App. A-2, pp. 27a-30a, 37a.) The State Employer-

Employee Relations Act was enacted by the California Legislature in 1977, effective July 1, 1978, and established a system of collective bargaining and representational rights within state civil service employment. The statute provided for recognition of employee organizations as exclusive representatives of appropriate units and for the right of state employees to refrain from participation in employee organizational activities, subject to certain forms of organizational security. (Cal. Gov. Code §§ 3515, 3515.7; Petn. for Writ of Cert., App. B-2, p. 45a.) Effective January 1, 1983, the statute was amended by the Legislature to specifically allow the negotiation of "fair share fees" as permissible forms of organizational security. (Cal. Gov. Code §§ 3513(j), 3515, 3515.7, 3515.8; Petn. for Writ of

Cert., App. B-2, pp. 44a-47a.)

The first payroll deduction of "fair share fees" from nonmember employee paychecks pursuant to the statutes was made on February 1, 1983, and all employees were notified of their right to demand and receive a pro rata rebate of the portion of fees used for "partisan political or ideological causes only incidentally related to the terms and conditions of employment." (Petn. for Writ of Cert., App. B-2, p. 47a.) Since July 1, 1983, respondent California State Employees Association has eliminated at the outset this pro rata portion from the "fair share fee" deduction of objecting employees' paychecks, rather than requiring such employees to wait for a rebate.

The district court denied the petitioners' (plaintiffs-appellants) preliminary injunction against deduction, collection and use of any portion of employees' wages as fair share fees in a 25-page memorandum opinion relying squarely upon precedent in the circuit. The district court also denied petitioners' motion for class certification and respondents (defendants-appellees) motion for abstention. Only the denial of preliminary injunction was appealed to the Ninth Circuit Court. (Petn. for Writ of Cert., App. A-1, pp. 2a-25a.)

The court of appeals reviewed the district court action denying preliminary injunction under the abuse of discretion/clear error standard of review. The court carefully considered the recently issued

Supreme Court holding in Ellis v. Brotherhood of Railway Clerks (1984) 104 S.Ct. 1883, in evaluating the denial of preliminary injunction, given the issues of the underlying suit, challenging the propriety of union expenditures and the constitutionality of the statutes. The court of appeals affirmed the denial of the preliminary injunction. (Petn. for Writ of Cert., App. A-2, pp. 27a-37a.)

REASONS FOR DENYING THE PETITION

I

There Are No Special and Important Reasons Therefor.

A review of the petition indicates that it presents no "special and important reasons" within the meaning of Supreme Court rule 17 that would justify the grant of a writ of certiorari in this matter.

(Sup.Ct. R. 17.1.) In the case of NLRB v. Pittsburgh S.S. Co. (1951) 340 U.S. 498, this Court observed that certiorari "is granted only in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarassing conflict of opinion and authority between courts of appeals." (340 U.S. at 502.) No such circumstances are presented by the instant petition. Rather, the lower courts merely followed Ninth Circuit precedents, as well as the Supreme Court's holdings in Abood v. Detroit Board of Education (1977) 431 U.S. 209; and Ellis v. Brotherhood of Railway Clerks, supra, 104 S.Ct. 1883.

II

The Petition Does Not Warrant The Exercise Of This Court's Extraordinary and Discretionary Jurisdiction.

A. There is no conflict in decisional law.

Petitioners raise no new arguments that were not considered by the court of appeals in affirming the district court's denial of preliminary injunction and in denying a petition for hearing/rehearing en banc. (Petn. for Writ of Cert., App. A-3, p. 39a.) Both the Seventh Circuit Court's decision in Hudson v. Chicago Teachers Union (7th Cir. 1984) 743 F.2d 1187; and the Third Circuit Court holding of Robinson v. State of New Jersey (3rd Cir. 1984) 741 F.2d 598, were supplied and briefed to the court of appeals prior to its decision denying rehearing. The

Hudson decision, upon which petitioners so strongly rely in asserting a purported conflict in decisional law among the courts of appeals, validated the Illinois "agency fee" statute against constitutional attack. The Robinson holding, like the holding of the lower courts in this cause, upheld the constitutionality of the "representational fee" statutory schemes of the states of New Jersey and California, respectively. Since all of these statutes were found by the courts of appeals to be constitutional, there is no conflict in the decisions of the appellate courts on the subject of "fair share" fees.

B. There is no overriding national issue.

Moreover, a review of the Robinson and Hudson decisions, the appellate court ruling herein, and this Court's rulings in Abood v. Detroit Board of Education, supra, 431 U.S. 209; and Ellis v. Brotherhood of Railway Clerks, supra, 104 S.Ct. 1883, demonstrate that the validity of "fair share," "representational" or "agency" fees depends upon analysis of the specific language of the enabling statute and the particular scheme for deduction, collection and use of such fees. Consequently, any decision by this Court in the instant case would have a very specialized effect, since it would apply only to the particular "fair share" fee under the California statute. Considering the enor-

mous number of urgent national issues requiring decision by this Court, the very limited national effect of a decision in this case does not justify the time the Court would have to devote to make the decision.

CONCLUSION

Based upon the foregoing arguments and authorities, these respondents pray that the Petition for Writ of Certiorari

/

/

/

/

/

/

/

/

to the United States Court of Appeals for the Ninth Circuit be denied.

Respectfully submitted,

Christine A. Bologna
Acting Chief Counsel
Department of Personnel
Administration
1115 11th Street
Sacramento, CA 95814

Counsel for Respondents
George Deukmejian and
Michael Frost
(James Mosman)

February 7, 1985